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IN THE

Supreme Court of the United States

October Term, 1974

No. 75-153

LAND O'LAKES, INC., formerly
LAND O'LAKES CREAMERIES, INC.,
a Minnesota corporation,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF OF PETITIONER

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INDEX

	PAGE
The Government's Brief Contains Some Factual Inaccuracies	2
The Decision Adversely Affects Virtually All Exempt Cooperatives	3

CITATIONS

Rev. Proc. No. 37, Cum. Bull. 1967-2, pp. 668-669	2, 3
Rev. Rul. 54-12, Cum. Bull. 1954-1, 93	4
Rev. Rul. 69-417, Cum. Bull. 1969-2, 132	5

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I

THE GOVERNMENT'S BRIEF CONTAINS SOME FACTUAL INACCURACIES

On page 4 of the Government's Brief and again on page 12, it is stated that the patronage dividends derived from handling side line items in marketing of the farmers' products were paid to Northwest Dairy Products Company, Inc., a non-producer, and only in the year following were they repaid to petitioner. The facts were that said corporation was used merely as a conduit for channeling the patronage to the farmers and such patronage was repaid to the petitioner immediately upon the receipt thereof for distribution to the farmers.

On page 10 of the Government's Brief, it is stated that sales of feed by petitioner to the agent-buyers were "unconditional". The facts were that such sales were *conditional* sales made under certain express written conditions. One of these conditions was that the feed would be re-sold only to farmers; and another condition was that the agent-buyer would furnish to petitioner signed duplicate sales slips on every re-sale and he agreed that the patronage dividends would be paid to the farmers.

On page 2 of the Government's Brief and throughout all the other pages of the Brief, the word "substantial" is used in describing petitioner's purchases from and sales to non-producers. That is a relative term and in this case what we are arguing about is 3.4% of sales and 2.6% of purchases. In the cases cited in the Petition where the exemption was sustained (pp. 11-12) the non-exempt transactions in some cases exceeded 10%. The Treasury Department's own rulings consider anything under 5% as being "incidental," Rev. Proc. No. 37, Cum. Bull. 1967-2, pp. 668-669.

II

THE DECISION ADVERSELY AFFECTS VIRTUALLY ALL EXEMPT COOPERATIVES

On page 7 of the Government's Brief it is contended that the Court of Appeals' decision has limited significance for petitioner and accordingly there is no reason for review by this Court. Again on page 14 of the Government's Brief it is contended that there is no showing that such decision will adversely affect the 5,000 farmers' cooperatives presently operating as exempt associations.

The point is this: the Court of Appeals' decision places so narrow an interpretation upon the statute, a literal interpretation, as to make the exemption useless and inoperative. The exempt cooperatives under this interpretation would be prevented from selling anything other than the farmers' own products no matter how essential it might be in a given situation to include some side line item to make more advantageous sales. The rulings of the Treasury Department indicate that exempt cooperatives do handle side line items and that practice has been affirmed; see Rev. Proc. No. 37, Cum. Bull. 1967-2, pp. 668-669, which states in part as follows:

> "Although section 521 does not provide exemption for cooperatives which market products for nonproducers, the Internal Revenue Service considers that there can be some circumstances under which an exempt cooperative may sell products it acquires from nonproducers as a necessary supplement or sideline to the efficient retail marketing of products for its producer patrons. For example, a dairy cooperative may find it difficult to market the

milk products of its patrons at retail unless it also offers for sale products acquired from nonproducers, such as fruit juice and eggs, which in these circumstances are sold as sideline items. . . .

"Where sales of nonproducer sideline items exceed five percent, a determination whether the sales constitute a necessary supplement to the efficient marketing of producer items will be made on the basis of all the facts and circumstances in the particular case."

This has been the practice of most of the exempt cooperatives. The effect of the Court of Appeals' decision will be to make it impossible for them to retain their exemptions.

Although petitioner did elect to surrender its exemption in 1970, nevertheless, the cooperative certainly ought to be able to reinstate its exempt status at any time it chooses to do so, which this decision makes impossible.

Regarding the agent-buyer situation, the function of the cooperative is to have supplies furnished to the farmers at cost. In the instant case the profits were from the manufacturing of the feed, done by petitioner, and those profits all went to the farmers. In the case of most exempt supply cooperatives, the principle business is selling petroleum products, and similar supplies to farmers. Almost every small town in the nation has a local farmers' cooperative of that character. Such cooperatives sell gasoline and other items to the town's people as well as to the farmers. Congress intended that such cooperatives could sell products to the town's people, but placed a limitation of 15%. That limitation was misconstrued by the Court of Appeals. Exempt cooperatives have as a practice utilized various methods of having supplies channeled to farmers at cost. In Rev. Rul. 54-12, Cum. Bull. 1954-1, 93, as

modified by Rev. Rul. 69-417, Cum. Bull. 1969-2, 132, an exempt farmers cooperative operated a refinery from which petroleum products were supplied to farmers. Some of the farmers were located at such distances that it was less costly for the cooperative to sell petroleum products to a proprietary refinery located near such farmers in exchange for the latter's products delivered from the latter's refinery to the farmers. The Treasury Department ruled that such sales to the proprietary company could be disregarded as respects the 15% limitation. It was looked upon as simply an expeditious way of getting those products to those particular farmers at lowest cost. It is just as reasonable to assume there was some mark-up of price in the sale by the proprietary company to the farmers as there was a mark-up of price in the case at bar. Exempt cooperatives not infrequently have employed methods similar to this in order to get their products to the farmers at lowest cost. The effect of this decision would be to jeopardize such cooperatives.

Respectfully submitted,

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